

dollars and having an average maturity in compliance with the federal securities exchange commission regulations for registered money market funds.

Approved June 7, 1991

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## CHAPTER 250

### ANNEXATION AND CITY DEVELOPMENT BOARD

*S.F. 4*

**AN ACT** relating to consideration of voluntary and involuntary annexation petitions which concern the same territory or city and providing an effective date and an applicability date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 368.1, subsection 13, Code 1991, is amended to read as follows:

13. "Urbanized area" means the land area within three miles of the boundaries of a city of fifteen thousand or more population a metropolitan statistical area as determined by the United States census bureau in the statistical abstract of the United States.

Sec. 2. **NEW SECTION.** 368.6 INTENT.

It is the intent of the general assembly to provide an annexation approval procedure which gives due consideration to the wishes of the residents of territory to be annexed, and to the interests of the residents of all territories affected by an annexation. The general assembly presumes that a voluntary annexation of territory more closely reflects the wishes of the residents of territory to be annexed, and, therefore, intends that the annexation approval procedure include a presumption of validity for voluntary annexation approval.

Sec. 3. Section 368.7, unnumbered paragraph 3, Code 1991, is amended to read as follows:

An application for annexation of territory within the urbanized area of a city other than the city to which the annexation is directed must be approved both by resolution of the council which receives the application and by the board. A copy of the application shall be mailed by certified mail, at least ten days prior to the filing of the application with the city council, to the council of each city whose boundary adjoins the territory or is within two miles of the territory, to the board of supervisors of each county which contains a portion of the territory, and to the regional planning authority of the territory. Notice of the filing of the application shall be published in an official county newspaper in each affected county at least ten days prior to the filing of the application with the city council. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. The annexation is completed when the board has filed copies of applicable portions of the proceedings as required by section 368.20, subsection 2.

Sec. 4. Section 368.7, Code 1991, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** If one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation for a common territory are submitted to the board within thirty days of each other, the board shall approve the application for voluntary annexation, provided that the application meets the applicable requirements of this chapter, unless the board determines by a preponderance of the evidence that the application was filed in bad faith, or that the application as filed is contrary to the best interests of the citizens of the urbanized area, or that the applicant cannot within a reasonable period of time meet its obligation to provide services to the territory to be annexed sufficient to meet

the needs of the territory. In consideration of the requests, the board may appoint a committee in the manner provided in section 368.14 to seek additional information from the applicant for voluntary annexation as necessary, including the information required of petitioners pursuant to section 368.11. The board, or the committee, if applicable, shall hold a public hearing on the application for voluntary annexation in the manner provided for involuntary petitions in section 368.15. The decision of the board under this paragraph shall be made within ninety days of receipt of the application by the board. The failure of the board to approve an application under this paragraph shall be deemed final agency action subject to judicial review. An applicant may appeal a decision of the board no earlier than one hundred eighty days after the decision is issued or not later than thirty days after a final decision is made by the special local committee under section 368.14A, whichever is earlier. If an application for voluntary annexation is not approved pursuant to this section, the board shall cause the conversion of the application to a petition pursuant to section 368.13 and shall proceed under section 368.14A. The conversion of an application to a petition shall not prejudice the status of the applicant. Judicial review of a board decision under this paragraph shall be limited to review of the testimony and documents presented to the board prior to issuing its decision on the application for voluntary annexation.

Sec. 5. Section 368.9, Code 1991, is amended to read as follows:

**368.9 BOARD CREATED.**

1. A city development board is created. The department of economic development shall provide office space and staff assistance, and shall budget funds to cover expenses of the board and committees. The board consists of ~~three~~ five members appointed by the governor subject to confirmation by the senate. The appointments must be for six-year staggered terms beginning and ending as provided by section 69.19, or to fill an unexpired term in case of a vacancy. Members are eligible for reappointment, but no member shall serve more than two complete six-year terms.

2. The board shall be composed of the following members:

a. One member appointed from a city with a population of more than forty-five thousand, according to the most recent certified federal census.

b. One member appointed from a city with a population of forty-five thousand or less, according to the most recent certified federal census.

c. One member appointed from a county with a population of more than fifty thousand, according to the most recent certified federal census.

d. One member appointed from a county with a population of fifty thousand or less, according to the most recent certified federal census.

e. One member appointed to represent the general public.

3. Each member is entitled to receive from the state actual and necessary expenses in performance of board duties and may also be eligible to receive compensation as provided in section 7E.6.

Sec. 6. Section 368.11, Code 1991, is amended by adding the following new unnumbered paragraphs:

**NEW UNNUMBERED PARAGRAPH.** At least ten days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known to all affected parties by sending a letter of intent by certified mail to the council of each city, the board of supervisors of each county within the urbanized area, the regional planning authority of the territory involved, and to each property owner listed in the petition. The written notification shall include notice that the petitioners shall hold a public meeting on the petition for involuntary annexation prior to the filing of the petition.

**NEW UNNUMBERED PARAGRAPH.** Before a petition for involuntary annexation may be filed, the petitioner shall hold a public meeting on the petition. Notice of the meeting shall be published in an official county newspaper in each affected county at least five days before

the date of the public meeting. The chairperson of the board of supervisors of the county containing the greatest area of the territory proposed to be annexed, or that person's designee, shall serve as chairperson of the public meeting. The auditor of the same county, or the auditor's designee, shall record the proceedings of the public meeting. Any person attending the meeting may submit written comments and may be heard on the petition. The minutes of the public meeting and all documents submitted at the public meeting shall be forwarded to the board by the chairperson of the meeting.

Sec. 7. Section 368.12, Code 1991, is amended to read as follows:  
368.12 DISMISSAL.

The board may dismiss a petition only if it finds that the petition does not meet the requirements of this ~~part~~ chapter, or that substantially the same incorporation, discontinuance, or boundary adjustment has been disapproved by a committee formed to consider the proposal, or by the voters, within the two years prior to the date the petition is filed with the board, or that the territory to be annexed, or a portion of that territory, has been voluntarily annexed under section 368.7. The board shall file for record a statement of each dismissal and the reason for it, and shall promptly notify the parties to the proceeding of its decision.

Sec. 8. Section 368.14, unnumbered paragraph 1, Code 1991, is amended to read as follows:

If a an involuntary petition is not dismissed, the board shall direct the appointment of local representatives to serve with board members as a committee to consider the proposal. Each local representative is entitled to receive from the state the representative's actual and necessary expenses spent in performance of committee duties. ~~Two~~ Three board members and one local representative, or if the number of local representatives exceeds one, ~~two~~ three board members and at least one-half of the appointed local representatives, are required for a quorum of the committee. A local representative must be a qualified elector of the territory or city which the representative represents, and must be selected as follows:

Sec. 9. NEW SECTION. 368.14A SPECIAL LOCAL COMMITTEES.

When two or more involuntary petitions or voluntary applications for boundary adjustment describing common territory are being considered together, the board shall direct the appointment of representatives for each of the petitions to serve on one special committee to consider the petitions. Expense reimbursement and qualifications of these representatives shall be as provided in section 368.14. Three board members and at least one-half of the appointed local representatives are required for a quorum of the special local committee. The manner of appointment of representatives shall be the same as for single petition committees except that if one or more of the territories to be annexed is in more than one county, the board of supervisors of the county containing the greatest area of the territory proposed to be annexed shall appoint one representative. The special committee shall consider the petitions in conformity with the provisions of this chapter, and shall resolve common territory issues between petitioners. The special committee shall conduct a public hearing on the petitions pursuant to section 368.15. If the common territory issue is resolved, the special local committee may approve the resulting compatible petitions by a single vote or separately, in its discretion.

Sec. 10. Section 368.19, unnumbered paragraph 1, Code 1991, is amended to read as follows:

The committee shall approve or disapprove the petition or plan as amended, within ninety days of the final hearing, and shall file its decision for record and promptly notify the parties to the proceeding of its decision. If a petition or plan is approved, the board shall set a date within not less than thirty days nor more than ninety days after approval for a special election on the proposal and the county commissioner of elections shall conduct the election. In a case of incorporation or discontinuance, qualified electors of the territory or city may vote, and the proposal is authorized if a majority of those voting approves it. In a case of annexation or severance, qualified electors of the territory and of the city may vote, and the proposal is authorized if a majority of the total number of persons voting approves it. In a case of consolidation, qualified electors of each city to be consolidated may vote, and the proposal is authorized

only if it receives a favorable majority vote in each city. The county commissioner of elections shall publish notice of the election as provided in section 49.53 and shall conduct the election in the same manner as other special city elections.

Sec. 11. TRANSITION.

1. The members of the city development board serving unexpired terms of office immediately before the effective date of this Act may continue to serve their unexpired terms unless they are otherwise disqualified under this Act. Within thirty days of the effective date of this Act, the governor shall appoint only those additional members needed to comply with section 368.9, subsection 2. Of the board members appointed by the governor pursuant to section 368.9, subsection 2, paragraphs "a" through "e", one shall be appointed to an initial term of two years, two shall be appointed to an initial term of four years, and the remainder to an initial term of six years.

2. Any voluntary application or involuntary city development petition which is pending before the board or a committee of the board on or after April 1, 1991, shall be remanded to the board for action under chapter 368 as amended by this Act. Notice of the remand shall be served upon the council of each city whose boundary adjoins the territory or is within two miles of the territory, the board of supervisors of each county which contains a portion of the territory, and the regional planning authority of the territory involved.

Sec. 12. EFFECTIVE DATES.

1. Except as provided in subsection 2 of this section, this Act, being deemed of immediate importance, takes effect upon enactment.

2. Section 6 of this Act takes effect July 1, 1991, and is applicable to petitions for involuntary annexation filed on or after July 1, 1991.

Approved June 10, 1991

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## CHAPTER 251

### AIR POLLUTION CONTROL

*S.F. 324*

**AN ACT** relating to authorized actions of local air pollution programs under the jurisdiction of the department of natural resources and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 455B.146, Code 1991, is amended to read as follows:

455B.146 **CIVIL ACTION FOR COMPLIANCE — LOCAL PROGRAM ACTIONS.**

If any order, permit, or rule of the department is being violated, the attorney general shall, at the request of the department or the director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed five ten thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty. Notwithstanding sections 331.302 and 331.307, a city or county which maintains air pollution control programs authorized by certificate of acceptance under this division may provide civil penalties consistent with the amount established for such penalties under this division.

Approved June 10, 1991